

REMARKS

The July 9, 2008 Office Action was based on pending Claims 33–45, 49–54, 56–65 and 67–70. By this Response, Applicant is amending Claims 33, 35–40, 42, 43, 45, 52, 56, 57, 59, 65, 69 and 70 and is canceling Claim 41, 49–51, 63 and 64 without prejudice or disclaimer. Applicant reserves the right to pursue the subject matter of any of the canceled claims and/or previously submitted claims in this or a continuing application. Claims 34, 44, 53, 54, 58, 60–62, 67 and 68 remain as previously presented.

Thus, after entry of the foregoing amendments, Claims 33–40, 42–45, 52–54, 56–62, 65 and 67–70 are pending and presented for further consideration. In view of the foregoing amendments and the remarks set forth below, Applicant respectfully submits that Claims 33–40, 42–45, 52–54, 56–62, 65 and 67–70 are in condition for allowance.

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

Submitted concurrently herewith is a Supplemental Information Disclosure Statement citing seventeen (17) references. Applicant respectfully requests the Examiner to consider the pending claims in connection with these references in order to make them of record.

CLAIM REJECTIONS UNDER 35 U.S.C. § 103(a)

Claims 33–36, 38, 53, 62, 67 and 69 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,865,680 to Briggs (“Briggs”) in view of U.S. Patent No. 6,426,741 to Goldsmith (“Goldsmith”).

Claims 37, 39, 40, 42–48, 52, 54–61, 65 and 66 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Briggs in view of Goldsmith and in further view of U.S. Patent No. 5,114,155 to Tillery et al. (“Tillery”) and U.S. Patent No. 6,371,375 to Ackley et al. (“Ackley”).

Applicant respectfully traverses this rejection, the characterization of the pending claims, and each an every implicit and/or explicit official notice. Moreover, in view of

the foregoing amendments and for at least the reasons set forth below, Applicant respectfully disagrees and requests reconsideration of the aforementioned claims.

Independent Claim 33

Focusing on independent Claim 33, in one embodiment of Applicant's invention an interactive gaming system is disclosed for entertaining one or more play participants. The system comprises play module(s) disposed within a play structure. Each of the play modules comprises multiple play elements with interactive challenge(s) to be played by play participant(s) as part of an interactive game. Moreover, at least two of the interactive challenges are arranged sequentially such that a first interactive challenge is necessary to be played before a second interactive challenge can be played.

The system also includes a toy wand operable by at least one play participant by waving, shaking, stroking and/or tapping the toy wand in a predetermined manner to transmit a first signal to wirelessly actuate at least one of the multiple play elements. The toy wand further includes a memory configured to (i) store identification information for uniquely identifying the at least one play participant and (ii) store progress information of the play participant in the interactive game. The toy wand is further configured to wirelessly transmit at least one of the identification information and the progress information to at least one of the play elements during participation by the play participant in the interactive challenge(s).

Neither Briggs, nor Goldsmith, nor a combination thereof, teaches or suggests the interactive gaming system of amended independent Claim 33. For instance, the cited references do not teach or suggest a toy wand operable by a play participant by waving, shaking, stoking and/or tapping the toy wand to wirelessly actuate a play element in an interactive game. Moreover, the cited references do not teach or suggest such a toy wand further having a memory that stores (i) identification information associated with the play participant and (ii) progress information of the play participant in the interactive game. Nor do the references teach or suggest transmitting this information during participation in the interactive game.

The July 9, 2008 Office Action cites Briggs for teaching a play structure having multiple play modules and elements providing interactive challenges. However, the Office Action acknowledges that (with emphasis added):

Briggs lacks explicitly disclosing that the game theme is a wizardry/fairy type theme where the use of a portable indicium such as a wand as a play element is involve [sic].

The Office Action then cites Goldsmith for teaching a “wand that wirelessly sends illuminating signals to a device through the use of a transceiver [i.e., the transmitter and receiver]” (emphasis added). The Office Action then concludes that it would have been obvious to combine the Briggs play structure with the Goldsmith computer input device.

Applicant respectfully disagrees with this rejection set forth by the Office Action and submits that the Examiner’s burden of showing a *prima facie* case of obviousness has not been met. First, Applicant respectfully submits that the Office Action has improperly read limitations into Claim 33. For example, nowhere in Claim 33 is there an element that states that the claimed interactive gaming system must have “a wizardry or fairy type theme,” which the Office Action uses as its basis for combining Briggs and Goldsmith.

Second, neither Briggs, nor Goldsmith discloses, among other things, a wand having a memory that stores (1) identification information of a participant and (2) progress information of the participant in the interactive game. Although the Office Action states that the Goldsmith “wand” has a transceiver, Goldsmith does not disclose this element. Rather, Goldsmith discloses an input device (10) for transmitting one-way signals for controlling a computer presentation of video signals through the use of a lamp (14) (see, e.g., column 1, lines 38–40). If the Office Action maintains that the Goldsmith device comprises a transceiver or is configured to receive communication, Applicant respectfully requests that the Examiner point to a particular section of Goldsmith that discloses such. Otherwise, Applicant respectfully submits that the Goldsmith device does not store at least progress information of a participant in an interactive game.

Applicant's Traversal of Official Notice

With respect to Claim 33, the Examiner appears to take Official Notice on Page 4 of the Office Action that it would have been obvious to one having ordinary skill in the art "[t]o store player identification data into [the wand] memory and to transfer this information to" play elements activated by the wand. The Examiner's reasoning to support this conclusion is that in "[t]his way, Briggs system can incorporate means to account for each mission completed by the participants."

Applicant respectfully traverses the Examiner's assertion of Official Notice as being improper. In particular, as discussed above, Goldsmith is directed to an input device that emits light signals detected by a camera in order to control a computer presentation. There is no teaching, suggestion, or reasoning in Goldsmith for storing and transmitting player identification information in an interactive game. Thus, Applicant respectfully requests documentary evidence supporting the Examiner's assertion that it is well known to include player identification information (and player progress information) in a one-way communication device such as disclosed in Goldsmith. Absent such documentation, Applicant respectfully requests the Examiner to withdraw the assertion of Official Notice as support for any subsequent rejection.

Improper Combination of Briggs and Goldsmith

Moreover, Applicant respectfully submits that it would not have been obvious to a skilled artisan at the time of Applicant's invention to combine Briggs and Goldsmith to teach the interactive gaming system of independent Claim 33. For instance, there appears to be no suggestion or motivation to use the input device (10) of Goldsmith to wirelessly actuate play elements in a play structure, such as the kinetic play elements in the play structure described in Briggs.

As discussed above, the Office Action's basis for combining Briggs and Goldsmith appears to be that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to have implemented a wizardry/fairy type game theme with Briggs play structure where one of the play elements comprises of Goldsmith's wand" (Page 3 of Office Action). The Office Action further states that such motivation to combine Briggs and Goldsmith could be found in column 3, lines 3–5, of

Briggs “where it states that other game themes could be implemented” (Page 4 of Office Action).

The Supreme Court recently explained that “a patent composed of several elements is not proved obvious merely by demonstrating that each element was, independently, known in the prior art.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. ___, ___, 82 U.S.P.Q.2d 1385, 1396 (2007). Moreover, “[r]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.* (citing *In re Kahn*, 441 F. 3d 977, 988 (Fed. Cir. 2006) (emphasis added)).

Moreover, it is also not sufficient for the Office Action to apply hindsight to piece together prior art to show the teaching of Applicant’s invention. It is not permissible to reconstruct the patentee’s claimed invention from the prior art by using the patentee’s claim as a “blueprint.” When prior art references require selective combination to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight obtained from the invention itself. *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 227 U.S.P.Q. 543 (Fed. Cir. 1985); See also M.P.E.P. § 2145(X)(A).

Rather, Applicant submits that the Office Action’s reasoning for combining Briggs and Goldsmith has no legal basis and that the Examiner has not met his burden of proving obviousness. For instance, as discussed above, there is no wizardry/fairy type theme discussed in independent Claim 33, and Goldsmith does not contemplate such a theme. Moreover, there is no suggestion or motivation to combine the computer input device (10) of Goldsmith to wirelessly actuate play elements in a play structure, such as the kinetic play elements in the play structure described in Briggs.

Furthermore, Applicant submits that even if Briggs and Goldsmith are combined, they do not teach or suggest every element of independent Claim 33, as discussed above.

Conclusion

Because the references cited by the Office Action do not disclose, teach or suggest each and every element of amended Claim 33, Applicant asserts that Claim 33 is patentably distinguished over the cited references, and Applicant respectfully requests allowance of Claim 33.

Independent Claims 42, 52 and 59

Each of independent Claims 42, 52 and 59 is believed to be patentably distinguished over the cited references for reasons similar to those set forth above with respect to the patentability of independent Claim 33 and for the different aspects recited therein. That is, neither Briggs, nor Goldsmith, nor Tillery, nor Ackley, nor any combination thereof, teaches or suggests each and every element of these claims.

For instance, none of the cited references teaches or suggests a motion-operated toy device having a memory that stores identification information and game progress information, which can be wirelessly communicated from the toy device to play element(s) during the performance of an interactive game. Rather, Tillery is directed to a card that records player statistics for a dart game, and Ackley discloses a radio frequency memory tag.

Furthermore, Applicant submits that there appears to be no suggestion or motivation to combine the identification card of Tillery and/or the memory device of Ackley with the input device of Goldsmith. For example, the July 9, 2008 Office Action states that combining Briggs and Goldsmith with Tillery would "facilitate the saving/pausing of a game especially in the common gaming case where the player leaves the game for a bathroom break." However, this stated motivation appears to have no relation to the claimed invention or the cited references. Again, mere conclusory statements, without an articulated reasoning with some rational underpinning, cannot be used to support a legal conclusion of obviousness.

Dependent Claims

Claims 34–40, 67 and 68 depend from independent Claim 33 and are believed to be patentably distinguished over the cited references for the reasons set forth above with respect to Claim 33 and for the additional features recited therein.

Claims 43–45 depend from independent Claim 42 and are believed to be patentably distinguished over the cited references for the reasons set forth above with respect to Claim 42 and for the additional features recited therein.

Claims 53, 54 and 56–58 depend from independent Claim 52 and are believed to be patentably distinguished over the cited references for the reasons set forth above with respect to Claim 52 and for the additional features recited therein.

Claims 60–62, 65, 69 and 70 depend from independent Claim 59 and are believed to be patentably distinguished over the cited references for the reasons set forth above with respect to Claim 59 and for the additional features recited therein.

Applicant's Traversal of Official Notice

With respect to dependent Claims 68 and 70, the Examiner appears to take Official Notice that “to add a vibrating type notification signal to the already taught light and sound notification signal is a matter of design choice well within the skill set of an ordinary skilled artisan” (Page 7 of Office Action).

Applicant respectfully traverses the Examiner's assertion of Official Notice. In particular, as discussed above, none of the cited references teaches a toy wand that receives wireless communication from a transceiver. For instance, the wand-like device of Goldsmith only transmits information (e.g., via a light bulb) to a camera. Thus, none of the cited references teaches or suggests a toy wand that produces vibration or sound upon receiving wireless communication because no cited reference discloses a toy wand that receives communication.

In view of the foregoing, Applicant respectfully disagrees that such elements recited in Claims 68 and 70 can be considered a “design choice” since the cited art would not be capable of performing the claimed features. Thus, Applicant respectfully requests documentary evidence supporting the Examiner's assertion that it would be a matter of design choice for the Goldsmith input device to produce “at least one of

vibration and sound . . . in response to receiving said wireless communications" when the Goldsmith input device is not configured to receive communication.

NO DISCLAIMERS OR DISAVOWALS

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

CONCLUSION

In view of the foregoing, the present application is believed to be in condition for allowance, and such allowance is respectfully requested. If further issues remain, the Examiner is cordially invited to contact the undersigned such that the issues may be promptly resolved.

Moreover, by the foregoing amendments and remarks no admission is made that any of the above-cited references are properly combinable. Rather, Applicant submits that even if the references are combined, the references still do not teach or suggest the claimed invention.

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Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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